

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

KENNETH BERNARD
Plaintiff

VERSUS

DOLGENCORP, LLC dba
DOLLAR GENERAL AND
ABC INSURANCE COMPANY

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CASE NO.

JUDGE

MAGISTRATE

JURY DEMANDED

NOTICE OF REMOVAL

TO: The Honorable Judges
of the United States District Court
for the Western District of Louisiana

Defendant, **DG LOUISIANA, LLC** (incorrectly captioned Dolgencorp, LLC),
respectfully submits this Notice of Removal of the above-styled matter, and as cause therefore
shows as follows.

1.

On the 13th day of August, 2015, the attached Petition was filed in the Civil District Court
for the Parish of Orleans, State of Louisiana, entitled *Kenneth Bernard v. Dolgencorp, LLC dba*
Dollar General, et al, bearing case number 2015-3980C.¹ Defendant was served with the
Petition on September 17, 2015.² Plaintiff filed a First Supplemental and Amending Petition for
Damages on October 5, 2015.³

¹ See Exhibit "A", Petition for Damages.

² See Exhibit "B", Service Return.

³ See Exhibit "C", First Supplemental and Amending Petition for Damages.

2.

Plaintiff's Petition alleges personal injuries as a result of an incident on April 25, 2015, at the Dollar General store located at 2325 Highway 93, Carencro, Louisiana 70520, where he alleges he "slipped on a liquid substance which was present on the floor, causing the petitioner to fall, which resulted in injuries" to his right hip, right thigh, right knee, bones, muscles, tendons, ligaments, body as a whole, and psychological well being.⁴

Plaintiff's Petition did not specify an amount of damages sought which is proper under Louisiana law. The Fifth Circuit Court of Appeals has establish the framework for resolving jurisdictional disputes where no specific amount of damages is asserted in a Petition.⁵ The removing defendant must prove, by a preponderance of the evidence, that the amount in controversy exceeds \$75,000.⁶ The defendant may make this showing in two ways: (1) by demonstrating that it is "facially apparent" that the claims are likely in excess of \$75,000, or (2) "by setting forth the *facts* in controversy-preferably in the removal petition, but sometimes by affidavit-that support a finding of the requisite amount."⁷ In this case, it is facially apparent from the plaintiff's Petition that the claim is likely in excess of \$75,000.

3.

This Court has original jurisdiction of this action under 28 U.S.C. § 1332, and this action is, therefore, removable to this court on the basis that:

A. The properly joined parties to this action are completely diverse:

⁴ See Exhibit "A", Petition for Damages, ¶¶ 2-3, 7.

⁵ *James v. Home Depot USA, Inc.*, 2002 WL 1453824 *1 (E.D. La. 2002)(citing *Luckett v. Delta Airlines*, 171 F.3d 295, 298 (5th Cir. 1999)).

⁶ *Id.*

⁷ *Id.*

1. Plaintiff, Kenneth Bernard, is a person of full age of majority and a domiciliary of the Parish of Lafayette, State of Louisiana;⁸ and
 2. DG Louisiana, LLC,⁹ is a single member limited liability company whose sole member is Dolgencorp, LLC, whose sole member is Dollar General Corporation, which is incorporated and has its principal place of business in Tennessee.
 - 3.
- B. The amount in controversy herein exceeds the sum of \$75,000.00, exclusive of interest and costs. Plaintiff's Petition failed to comply with Louisiana Code of Civil Procedure article 893 requiring him to include a "general allegation that the claim exceeds or is less than" the amount for "the lack of jurisdiction of federal courts due to insufficiency of damages."¹⁰ However, it is "facially apparent" that plaintiff's claims are likely in excess of \$75,000. In his First Supplemental and Amending Petition for Damages, Plaintiff avers he "sustained damages exceeding \$50,000."¹¹ Moreover, plaintiff avers that "[a]s a result of said incident, Kenneth Bernard sustained severe and disabling injuries including but not limited to" injuries to his right hip, right thigh, knee, bones, muscles, tendons, ligaments, body as a whole, and psychological well-being.¹² Further, the Petition seeks damages for *past and future* medical expenses, physical pain and suffering,

⁸ See Exhibit "A", Petition for Damages.

⁹ Although Plaintiff also names "ABC Insurance Company" as a Defendant, this fictitious entity was not served and is not considered in evaluating diversity

¹⁰ See La. C.C.P. article 893.

¹¹ See Exhibit "C", First Supplemental and Amending Petition for Damages, ¶ 10.

¹² See Exhibit "A", Petition for Damages, ¶ 7.

mental anguish and suffering, lost wages and earning capacity.¹³ Plaintiff also seeks recovery for loss of enjoyment of life and inconvenience.¹⁴ The instant case is comparable to *Gebbia v. Wal-Mart Stores, Inc.*, where the Court found that it was “facially apparent” from the Petition that the amount in controversy exceeded \$75,000.¹⁵ The Petition in *Gebbia* included allegations that plaintiff sustained injuries to “her right wrist, left knee and patella, and upper and lower back.”¹⁶ The *Gebbia* Petition also “alleged damages for medical expenses, physical pain and suffering, mental anguish and suffering, loss of enjoyment of life, loss of wages and earning capacity, and permanent disability and disfigurement.”¹⁷ The Court found that such allegations supported a monetary basis to confer removal jurisdiction.¹⁸ The allegations contained in the instant Petition filed by Ms. Joiner, which are nearly identical to those contained in the *Gebbia* Petition, also support a monetary basis for removal jurisdiction.

4.

A jury trial is demanded on all issues.

WHEREFORE, removing Defendant, DG Louisiana, LLC, prays that the above action now pending in the 15th Judicial District Court for the Parish of Lafayette, State of Louisiana, be removed therefrom to this Honorable Court. A jury trial is demanded on all issues.

¹³ See Exhibit “A”, Petition for Damages, ¶ 8.

¹⁴ *Id.*

¹⁵ 233 F.3d 880 (5th Cir. 2000).

¹⁶ *Id.* at 883.

¹⁷ *Id.*

¹⁸ *Id.*

Respectfully submitted,

/s/ Peter J. Wanek

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by placing same in the U.S. Mail, postage prepaid and properly addressed this 16th day of October, 2015.

/s/ Peter J. Wanek